

142 FERC ¶ 61,104  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Ruby Pipeline, L.L.C.

Docket No. RP12-1013- 001

ORDER ON COMPLIANCE FILING

(Issued February 8, 2013)

1. On October 30, 2012, Ruby Pipeline, L.L.C. (Ruby) filed tariff records<sup>1</sup> to comply with the Commission's September 28, 2012 order,<sup>2</sup> which required Ruby to either revise the cash-out mechanism in its fuel, lost and unaccounted for (FL&U) tracker or to show cause why it should not be required to do so. Also, to comply with the directives of the September 28 Order, Ruby provided information identifying each entity from which it purchases or sells operational gas. The Commission rejects the proposed tariff records and requires Ruby Pipeline to modify its tariff within 30 days, in accordance with this order.

**I. Background**

2. On August 31, 2012, Ruby filed tariff records in Docket No. RP12-1013-000 to adjust its FL&U percentages and its electric power cost rates. Because the calculation of the FL&U Reimbursement Percentages would have resulted in a negative quantity, Ruby applied its tariff's FL&U cash-out mechanism to credit its shippers the value of these over-collected quantities.

3. The Commission's September 28 Order accepted and suspended Ruby's August 31 filing, subject to refund and conditions, effective October 1, 2012. The September 28 Order determined that Ruby followed the provisions of its existing tariff to cash-out its over-collected FL&U amounts. However, the Commission directed Ruby to provide information identifying each entity from which Ruby purchases or sells operational gas.

4. Although the September 28 Order concluded that Ruby's filing complied with its existing tariff provisions, the Commission exercised its authority under section 5 of the

---

<sup>1</sup> Ruby Pipeline, L.L.C., FERC NGA Gas Tariff, Ruby Tariff; [Part IV: GT&C, Section 1 - Definitions, 1.0.1](#); [Part IV: GT&C, Section 13 – Fuel and L&U, 1.0.0](#).

<sup>2</sup> *Ruby Pipeline, L.L.C.*, 140 FERC ¶ 61,256 (2012) (September 28 Order).

Natural Gas Act to require Ruby to explain why it should not be required to modify its provisions for cashing-out over-collections of fuel. The Commission explained that neither the pipeline nor the shippers should gain or lose as a result of a fuel tracking mechanism. The Commission stated that Ruby's existing FL&U cash-out mechanism violates this tenet because it allows Ruby to undervalue the refunds due to shippers because Ruby cashes out the over-collection at the "lowest" of the index prices described in section 10.3 of the General Terms and Conditions (GT&C) of Ruby's tariff. The Commission further observed that Ruby's average unit sales price was \$2.645/Dth for June 2012 while Ruby assigned a value of \$2.272/Dth for the cash out index price for June 2012. As a result of the difference between the sales price and the cash out index price, the Commission concluded that Ruby gained and the shippers lost \$.373/Dth for June 2012.

## **II. Details of the Filing**

5. Ruby asserts that the September 28 Order misinterprets its tariff. Ruby states that its tariff does not cash out over-recoveries at the "lowest of the index prices described in section 10.3 of the GT&C." Rather, Ruby contends that under its current tariff, over-retained quantities of FL&U are cashed-out using an index price at its eastern terminus at Kern River Transmission Company, Wyoming (Kern River-Opal).

6. However, Ruby also proposes to revise its tariff to address the concerns raised by the September 28 Order. Ruby explains that it has a straw-like system without storage facilities and that it receives almost all of its gas at Kern River-Opal and delivers gas to its western terminus near Malin, Oregon (PG&E-Malin). Accordingly, in most cases, Ruby states that the Kern River-Opal pricing reference point represents the value of the gas at the time it is provided by the shipper to Ruby. However, Ruby acknowledges that small quantities of gas may occasionally be tendered at PG&E-Malin. Thus, Ruby proposes tariff language defining the "FL&U Cash Out Index Price," so that it is determined based upon the index prices at Kern River-Opal and PG&E-Malin, weighted for the volumes received at each location.

7. Ruby states that the September 28 Order incorrectly implied that the FL&U cash-out should be based upon the price at the time the excess quantities are sold. Ruby insists that the cash out for over-recovered FL&U quantities should be based upon the price at which quantities of operational gas are received. Ruby argues that the September 28 Order fails to cite any case where the Commission has found that a fuel tracker was required to include the gains and losses from the purchases and sales of operational gas. Ruby states that the Commission has rejected the argument that operational purchases and sales must be included in a tracker.<sup>3</sup> Furthermore, Ruby states that the September 28 Order does not explain why shippers that provided gas near Kern River-Opal should be compensated for the value of gas at PG&E-Malin, which is 600 miles away.

---

<sup>3</sup> Ruby Transmittal at 7 (citing *Wyoming Interstate Co., Ltd.*, 111 FERC ¶ 61,215, at PP 11-16 (2005)).

8. Ruby further states that the need to sell line pack is based upon several factors, not merely whether Ruby is retaining gas from FL&U over-retention. Ruby asserts that shipper imbalances, OBA imbalances, fuel and lost and unaccounted for under- and over-collections, and operational losses of gas (e.g., valve failures) all act to increase and decrease Ruby's net line pack. Furthermore, Ruby also states that there will be time periods when Ruby will need to cash out over-retained FL&U quantities but does not conduct any operational sales during the same period. Thus, Ruby asserts that the sale of gas cannot be directly linked to the FL&U over retention. Ruby adds that for gas to be sold away from the receipt point, the gas must be transported by Ruby to a different location.

### **III. Public Notice, Interventions and Protests**

9. Public notice of Ruby's filing was issued on October 31, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The filing was protested by the Indicated Shippers.<sup>4</sup>

10. Indicated Shippers contend that Ruby's compliance filing fails to address the concerns raised by the September 28 Order. Indicated Shippers explain that the September 28 Order compared (a) the index price that Ruby used to cash out the fuel over-collections in its August 31 Fuel Filing with (b) the average price that Ruby received for operational sales during the reporting period. Indicated Shippers state that this comparison revealed that Ruby gained and shippers lost \$0.373/Dth as a result of applying the tariff's imbalance cash-out process to the fuel provision in June 2012. Indicated Shippers assert that Ruby's proposal does not address the disparity between the index prices used to calculate the cash out for over-collections and the price Ruby receives for operational sales.

11. Indicated Shippers dispute Ruby's argument that the September 28 Order rests on the assumption that Ruby's "operational gas being sold is solely or uniquely the over-retained FL&U." They state that the Commission need not find that all of Ruby's operational sales are the result of over-collected fuel. Rather, Indicated Shippers assert that Ruby may not sell even one dekatherm of fuel gas at a price higher than how it compensates shippers under the FL&U cash out mechanism.

12. Accordingly, the Indicated Shippers state that Ruby should be required to use the weighted average price that Ruby receives for its operational sales during the reporting

---

<sup>4</sup> Indicated Shippers consist of BP Energy Company, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, Occidental Energy Marketing, Inc., Shell Energy North America (US), L.P. and SWEPI LP.

period to determine its cash-out for fuel over-collections. They assert that if Ruby does not make any operational sales, but must refund fuel over-collections during a reporting period, then Ruby should value the over-collections at the higher of the monthly average index prices (at either Kern River-Opal or PG&E-Malin) for the production month in which the FL&U over-collections occurred. Indicated Shippers contend that this is consistent with the Commission's practice of assuming that the pipeline will act in its economic interest and sell gas at the highest price it can achieve.

13. Indicated Shippers request the Commission deny Ruby's compliance filing proposal on the grounds that it is unjust and unreasonable, affirm its finding in the September 28 Order that Ruby's existing FL&U tariff mechanism is unjust and unreasonable, and require Ruby to value fuel over-collections at the index price that Ruby receives/would receive for operational sales during the reporting period to avoid a windfall to the pipeline.

#### **IV. Discussion**

14. The Commission rejects Ruby's proposal. Ruby has not demonstrated that its proposed tariff modification is just and reasonable or that the proposed tariff language is consistent with the principles explained in the September 28 Order. Fuel reimbursement provisions, including cash-outs for over-collections of fuel, should not be a profit center for the pipeline. Such fuel reimbursement provisions are intended only to compensate a pipeline for the cost of fuel actually used, and the cash-out of a pipeline's fuel over-recoveries may not be used to increase a pipeline's return. Accordingly, Ruby should not be able to profit because it collected more fuel from its shippers than it needed to operate its system. Rather, when cashing-out over-collected fuel quantities, Ruby must provide to its shippers the reasonable monetary equivalent value of any over-recovered gas, which should reflect the sale price Ruby would receive if it sold the gas.

15. In its filing, Ruby proposes to calculate the cash-out compensation to shippers based upon the value of the gas at the point of receipt, which Ruby explains will almost always be Kern River-Opal. However, Ruby appears to make nearly all of its operational sales at PG&E-Malin.<sup>5</sup> Because the price of gas at PG&E-Malin is typically more than it is at Kern River-Opal, Ruby pockets this difference in price related to the over-collected fuel. Ruby's proposal turns the cash-outs for over-collections of fuel into a profit center for the pipeline. This is not just and reasonable.

16. Ruby contends that the Commission has previously rejected the position that operational purchases and sales must be included in a fuel tracker.<sup>6</sup> However, the cases cited by Ruby are inapposite. In those proceedings, the Commission was addressing tariff

---

<sup>5</sup> Appendix A to the filing.

<sup>6</sup> Ruby Transmittal at 7 (citing *Wyoming Interstate Co., Ltd.*, 111 FERC ¶ 61,215).

provisions relating to the pipeline's purchase and sale of gas for management purposes, not the specific circumstance at issue here relating to how a pipeline should calculate a cash-out for returning an over-recovery of fuel.<sup>7</sup>

17. Accordingly, the Commission directs Ruby pursuant to section 5 of the Natural Gas Act to revise its provisions governing cash-outs for fuel and L&U to provide shippers the reasonable monetary value of the sale of the gas.

The Commission orders:

(A) The tariff records in footnote 1 are rejected.

(B) Ruby Pipeline is directed to modify its tariff within 30 days, in accordance with this order.

By the Commission. Chairman Wellinghoff is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>7</sup> *E.g., Wyoming Interstate Co., Ltd.*, 111 FERC ¶ 61,215, at P 4 (2005).